

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Application

of

MAGIC MARKER CORPORATION

for revision or refund of franchise
tax under Article 9-A of the tax law
for the fiscal year ended June 30,
1962.

Magic Marker Corporation having filed application
for revision or refund of franchise tax under Article 9-A of
the tax law for the fiscal year ended June 30, 1962, and a
hearing having been held in connection therewith at the office
of the State Tax Commission in New York City on June 8, 1971
before John J. Genevich, Hearing Officer of the Department of
Taxation and Finance, at which hearing the taxpayer was repre-
sented by Ira M. Ingberman, president of the corporation, and
the record having been duly examined and considered by the State
Tax Commission,

It is hereby found:

(1) The taxpayer was incorporated in New York on
July 24, 1959 and is engaged in the manufacture of marking devices.

(2) A report of change in federal income was filed by
the taxpayer on form CT-3360 for the fiscal year ended June 30,
1962 claiming a refund of \$29,657.07 based on carryback of a
net operating loss of \$578,397.66 sustained in the fiscal year
ended June 30, 1965. The franchise return for the latter year
contained a deduction in the amount of \$578,107.59 identified
on a rider as "Loss related to chargeoff of worthless investment
and receivables from Dimensional Research Corporation, a wholly-
owned subsidiary which filed a petition in bankruptcy on June
25, 1965." A final federal determination for the fiscal year

ended June 30, 1965 reduced such deduction to \$505,854.28. The Corporation Tax Bureau added back the amount of \$505,854.28 as being attributable to subsidiary capital, resulting in an entire net loss of \$72,543.38 for the fiscal year ended June 30, 1965. Such loss was carried back to the fiscal year ended June 30, 1962 and a refund of \$1,837.09 was issued.

(3) Taxpayer filed a timely application for revision or refund claiming that only \$94,809.19 of the amount of \$505,854.28 should be added back as being attributable to subsidiary capital, leaving \$411,045.09 in dispute. Dimensional Research Corporation became a subsidiary of the taxpayer on December 9, 1964, when its entire capital stock was acquired in exchange for stock of the taxpayer.

(4) The amount of \$411,045.09 consists of advances of \$194,042.44 made by the taxpayer to its subsidiary during the period January 6, 1964 through June 11, 1965, and the remaining items arose from various other transactions which resulted in indebtedness owed by the subsidiary to the taxpayer. In the bankruptcy proceedings, the taxpayer listed itself as a creditor of Dimensional Research Corporation for the full amount of \$411,045.09 and subsequently received its prorata share of payments made to creditors.

(5) That Section 208 of the tax law, as in effect for taxable years beginning prior to January 1, 1968, reads, in part:

"3. The term 'subsidiary' means a corporation of which over fifty per centum of the number of shares of stock entitling the holders thereof to vote for the election of directors or trustees is owned by the taxpayer;"

"4. The term 'subsidiary capital' means investments in the stock of subsidiaries and any indebtedness from subsidiaries, whether or not evidenced by written instrument, * * *."

"9. The term 'entire net income' means total net income from all sources, which shall be presumably the same as the entire taxable income which the taxpayer is required to report to the United States treasury department, * * *, except as hereinafter provided, * * *."

"(a) Entire net income shall not include:

"(1) income, gains and losses from subsidiary capital * * *."

The State Tax Commission hereby

DETERMINES:

(A) That Dimensional Research Corporation was a subsidiary of the taxpayer on June 25, 1965, when the subsidiary filed a petition in bankruptcy, and all investments in and indebtedness from the subsidiary on that date constitute subsidiary capital of the taxpayer.

(B) That the write off in the fiscal year ended June 30, 1965 of the investments in and indebtedness from Dimensional Research Corporation is a loss from subsidiary capital and is not includible in the term "entire net income" as defined in paragraph 9 of Section 208 of the tax law.


(C) That the net operating loss deduction allowable for the fiscal year ended June 30, 1962 is \$72,543.38, based on carryback of the loss sustained in the fiscal year ended June 30, 1965, and the refund granted of \$1,837.09 is affirmed as correct.

Dated: Albany, New York

this 2nd day of December 1971.

STATE TAX COMMISSION


President


Commissioner


Commissioner